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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

THE SCO GROUP, INC.,

Plaintiff/Counterclaim-Defendant,

v.

INTERNATIONAL BUSINESS MACHINES
CORPORATION,

Defendant/Counterclaim-Plaintiff.

**IBM'S MOTION FOR SUMMARY
JUDGMENT ON SCO'S UNFAIR
COMPETITION CLAIM (SCO'S SIXTH
CAUSE OF ACTION)**

(ORAL ARGUMENT REQUESTED)

Civil No. 2:03CV-0294 DAK

Honorable Dale A. Kimball

Magistrate Judge Brooke C. Wells

Pursuant to DUCivR 56-1(a) and Federal Rules of Civil Procedure 1, 26, 30, 33, 37 and 56, Defendant/Counterclaim-Plaintiff International Business Machines Corporation (“IBM”) respectfully submits this motion for summary judgment on Plaintiff/Counterclaim-Defendant The SCO Group, Inc.’s (“SCO”) unfair competition claim (SCO’s Sixth Cause of Action).

As is more fully set forth in the accompanying memorandum, SCO’s unfair competition claim is a mix of SCO’s other causes of action and separate allegations of misconduct regarding Project Monterey (“Monterey”), which was a joint development project between IBM and The Santa Cruz Operation, Inc. (“Santa Cruz”) beginning in 1998. To the extent SCO’s unfair competition claim concerns Monterey — which appears to be its focus — the claim is untenable for at least three independent reasons: (1) it is untimely; (2) SCO cannot show that IBM engaged in unfair competition regarding Monterey; and (3) the claim is preempted by federal copyright law. To the extent the claim is based on the alleged misconduct underlying SCO’s other claims, it is untenable for the reasons set out in IBM’s motions for summary judgment with respect to those claims, which are incorporated in the accompanying memorandum by reference.

For the all foregoing reasons, and for the reason that SCO cannot adduce admissible evidence sufficient to establish the essential elements of its claim, this Court should enter summary judgment in favor of IBM on SCO’s claim for unfair competition (SCO’s Sixth Cause of Action).

DATED this 25th day of September, 2006.

SNELL & WILMER L.L.P.

/s/ Amy F. Sorenson
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CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of September, 2006, a true and correct copy of the foregoing was electronically filed with the Clerk of the Court and delivered by CM/ECF system to the following:

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